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**From:** Miles, James [miles.james@epa.gov]  
**Sent:** 2/21/2019 5:14:34 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]  
**CC:** Holmes, Carol [Holmes.Carol@epa.gov]; Presler, Amos [presler.amos@epa.gov]; Baney, Tony [Baney.Tony@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Gardner, Geraldine [Gardner.Geraldine@epa.gov]  
**Subject:** RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]  
**Attachments:** ENV\_DEFENSE-#862133-v4-Hazleton\_\_DRAFT\_BRIEF.DOCX; Petitioner's Response to Jurisdictional Issues.pdf

Susan –

Please find attached the briefs on the Third Circuit's jurisdiction in the matter of Hazelton Creek. Our OECA attorney is out of the office this week, but our technical expert is available to answer any questions you might have.

James

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**From:** Miles, James  
**Sent:** Wednesday, February 20, 2019 2:27 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Holmes, Carol <Holmes.Carol@epa.gov>; Presler, Amos <presler.amos@epa.gov>; Baney, Tony <Baney.Tony@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Gardner, Geraldine <Gardner.Geraldine@epa.gov>  
**Subject:** RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Hi Susan,

We are updating you on the status of the enforcement matter concerning Hazelton Creek Properties, Moosic, in Pennsylvania. OGC discussed the case with OCSPF this morning, and Alex Dunn has a call scheduled with the Region 3 RA this afternoon at 4pm to discuss it as well. It is our understanding that you will be invited to participate in that call.

Procedural Status

**Attorney Client / Ex. 5**

Substantive Background: use versus disposal of PCBs:

**Attorney Client / Ex. 5**

Pennsylvania Department of Environmental Protection's (PADEP) issued a *General Permit for Beneficial Use* that allows for the use (and import from other states) of construction fill material at state permitted sites where that fill has a total PCB concentration of up to 484.5 ppm. The materials being "used" or proposed for "use" as fill by Hazelton, under PADEPs General Permit, are excavated from demolition and construction sites or proposed dredging sites in other states and transported to PA for use as construction fill.

# Attorney Client / Ex. 5

Next Steps

# Attorney Client / Ex. 5

OGC provided some helpful regional briefing material (attached). We wish we could have provided you more background in advance of this afternoon, but OCE staff can be brief you further at tomorrow's OCE Weekly.

James Miles  
Acting Associate Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
William Jefferson Clinton Bldg., South, Rm. 4111A  
1200 Constitution Ave., NW  
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Begin forwarded message:

**From:** "Saenz, Diana" <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>  
**Date:** December 20, 2018 at 6:28:22 PM EST  
**To:** "Bodine, Susan" <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>, "Starfield, Lawrence" <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>, "Traylor, Patrick" <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>, "Kelley, Rosemarie" <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>, "Sullivan, Greg" <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>  
**Cc:** "Miles, James" <[miles.james@epa.gov](mailto:miles.james@epa.gov)>, "Werner, Jacqueline" <[Werner.Jacqueline@epa.gov](mailto:Werner.Jacqueline@epa.gov)>, "Presler, Amos" <[presler.amos@epa.gov](mailto:presler.amos@epa.gov)>  
**Subject:** RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Susan – Here is a procedural update on the Hazelton Creek filing [TSCA/ PCBs]:

Hazelton Creek Properties, Moosic, Pennsylvania, filed a petition dated 12/5/18 for review with the U.S. Court of Appeals for the Third Circuit. The filing requests review of what the petitioner labels a “final agency action” in the form of a Notice of Noncompliance and Information Request.

The scheduling order required a government response by Thursday, December 20<sup>th</sup>, but DOJ filed an unopposed motion for extension of time to respond by January 8th. The motion has not yet been granted, but the clerk advised DOJ to proceed as if it will be granted.

# Attorney Client / Ex. 5

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We will provide you with more information in early January and will be available if you would like to discuss this during the first week of January.

Thank you,  
Diana

Diana J. Saenz  
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Waste and Chemical Enforcement Division  
Office of Civil Enforcement/ U.S. EPA  
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Washington, D.C. 20460  
Phone: (202) 564-4209  
Fax: (202) 564-0022  
[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)

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**From:** Sullivan, Greg  
**Sent:** Monday, December 10, 2018 11:45 AM  
**To:** Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>; Miles, James <[miles.james@epa.gov](mailto:miles.james@epa.gov)>; Werner, Jacqueline <[Werner.Jacqueline@epa.gov](mailto:Werner.Jacqueline@epa.gov)>  
**Cc:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Subject:** FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Please reach out to region 3.

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**From:** Bodine, Susan  
**Sent:** Monday, December 10, 2018 10:12 AM  
**To:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Sullivan, Greg <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>  
**Cc:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Branning, Hannah <[Branning.Hannah@epa.gov](mailto:Branning.Hannah@epa.gov)>  
**Subject:** FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

# Attorney Client / Ex. 5

Susan

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**From:** Beck, Nancy

**Sent:** Monday, December 10, 2018 8:00 AM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Wright, Peter <[wright.peter@epa.gov](mailto:wright.peter@epa.gov)>

**Subject:** FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

FYI

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Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: 202-564-1273

[beck.nancy@epa.gov](mailto:beck.nancy@epa.gov)

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**From:** Grant, Brian

**Sent:** Monday, December 10, 2018 7:18 AM

**To:** OGC Immediate Office MGMT <[OGC\\_Immediate\\_Office\\_MGMT@epa.gov](mailto:OGC_Immediate_Office_MGMT@epa.gov)>; OGC Immediate Office Support <[OGCFrontOfficeSupportStaff@epa.gov](mailto:OGCFrontOfficeSupportStaff@epa.gov)>; Beck, Nancy <[Beck.Nancy@epa.gov](mailto:Beck.Nancy@epa.gov)>; Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)>; Bertrand, Charlotte <[Bertrand.Charlotte@epa.gov](mailto:Bertrand.Charlotte@epa.gov)>; Morris, Jeff <[Morris.Jeff@epa.gov](mailto:Morris.Jeff@epa.gov)>; Mottley, Tanya <[Mottley.Tanya@epa.gov](mailto:Mottley.Tanya@epa.gov)>

**Cc:** Cole, Joseph E. <[cole.josephe@epa.gov](mailto:cole.josephe@epa.gov)>; Fisher, Bethany <[fisher.bethany@epa.gov](mailto:fisher.bethany@epa.gov)>

**Subject:** NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

On December 5, Hazelton Creek Properties, located in Moosic, PA, filed a petition for review under TSCA section 19(a) in the US Court of Appeals for the Third Circuit challenging a Notice of Noncompliance (NON) issued by EPA Region 3. The NON asserts that placement of PCB materials on the site property at levels over 2 ppm, in compliance with a Pennsylvania State permit and Pennsylvania policy, constitutes a violation of the EPA TSCA PCB regulations, and cautions that further receipt by the company of such materials may result in EPA enforcement. The Notice states that "No corrective action is necessary by your company at this time".

We will contact DOJ to have an attorney assigned and work with Region 3 ORC on this. Please let us know if you have any questions.

*Brian Grant*

EPA Office of General Counsel

Pesticides and Toxic Substance Law Office

202-564-5503